

AMENDED IN SENATE JUNE 16, 2014

AMENDED IN ASSEMBLY MAY 7, 2014

AMENDED IN ASSEMBLY APRIL 22, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

## ASSEMBLY BILL

**No. 1863**

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**Introduced by Assembly Member Jones**  
**(~~Coauthor:~~ Coauthors: Assembly Member Members Ian Calderon,**  
**Cooley, Hall, and Lowenthal)**

February 19, 2014

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An act to amend Sections 1796.12, 1796.14, 1796.17, 1796.22, 1796.29, 1796.33, 1796.34, 1796.35, 1796.37, 1796.38, 1796.39, 1796.41, 1796.42, 1796.44, 1796.45, 1796.51, 1796.52, 1796.53, 1796.55, 1796.61, and 1796.63 of, *to amend the heading of Article 8 (commencing with Section 1796.44) of Chapter 13 of Division 2 of*, and to add Sections 1796.40 and 1796.50 to, the Health and Safety Code, relating to public health.

### LEGISLATIVE COUNSEL'S DIGEST

AB 1863, as amended, Jones. Home Care Services Consumer Protection Act.

Existing law establishes the Home Care Services Consumer Protection Act (the act), which provides, on and after January 1, 2015, for the licensure and regulation of home care organizations, as defined, by the State Department of Social Services, and for the registration of home care aides. Violation of the act is a misdemeanor. Existing law requires background clearances for home care aides and home care organizations, as specified. Existing law authorizes any individual that possesses, among other things, a valid Alien Registration Card, and who has

submitted an application, to initiate a background examination to be either a registered home care aide or to be a licensed home care organization.

This bill, commencing January 1, 2016, would make the provisions of the act applicable to domestic home care aide referral organizations, as defined, including licensure, fees, enforcement and fines, and regulation of registered home care aides having agreements with those organizations. By expanding the scope of a crime, this bill would impose a state-mandated local program. *The bill would require a domestic home care aide referral organization to provide specified information to a person to whom a home care aide is referred, including specified information about the person's potential employer responsibilities.* The bill would authorize any individual that possesses either a valid Alien Registration Receipt Card or valid Permanent Resident Card to initiate a background examination to be either a registered home care aide or to be a licensed home care organization or a domestic home care aide referral organization.

Existing law requires the State Department of Social Services to post any proposed regulations promulgated for purposes of implementing the act on its public Internet Web site no earlier than 10 calendar days prior to the effective date of the proposed rule, as specified.

This bill would instead require the State Department of Social Services to post any proposed regulations promulgated on its public Internet Web site no later than 90 calendar days prior to the effective date of the proposed rule, as specified.

This bill would also correct an erroneous cross-reference.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 1796.12 of the Health and Safety Code
- 2 is amended to read:
- 3 1796.12. For purposes of this chapter, the following definitions
- 4 shall apply:

1 (a) “Affiliated home care aide” means an individual, 18 years  
2 of age or older, who is employed by a home care organization to  
3 provide home care services to a client and is listed on the home  
4 care aide registry.

5 (b) “Child” or “children” means an individual or individuals  
6 under 18 years of age.

7 (c) “Client” means an individual who receives home care  
8 services from a registered home care aide.

9 (d) “Department” means the State Department of Social  
10 Services.

11 (e) “Director” means the Director of Social Services.

12 (f) “Domestic home care aide referral organization” means an  
13 employment agency, as defined in Section 1812.5095 of the Civil  
14 Code that ~~provides referrals home care services provided by a~~  
15 ~~registered home care aide to a client, offers, refers, provides, or~~  
16 ~~attempts to provide work for an independent home care aide who~~  
17 ~~is providing home care services~~ and is licensed pursuant to this  
18 chapter.

19 (g) “Domestic home care aide referral organization applicant”  
20 means an individual, 18 years of age or older, or a firm, partnership,  
21 corporation, limited liability company, joint venture, association,  
22 or other entity that is requesting to become a domestic home care  
23 aide referral organization licensee and the department has received  
24 and is processing the complete domestic home care aide referral  
25 organization application and nonrefundable application fee.

26 (h) “Domestic home care aide referral organization application”  
27 means the official form, designated by the department, to request  
28 to become a licensed domestic home care aide referral organization.

29 (i) “Domestic home care aide referral organization licensee”  
30 means an individual, 18 years of age or older, firm, partnership,  
31 corporation, limited liability company, joint venture, association,  
32 or other entity having the authority and responsibility for the  
33 operation of a licensed domestic home care aide referral  
34 organization.

35 (j) “Family member” means any spouse, by marriage or  
36 otherwise, child or stepchild, by natural birth or by adoption,  
37 parent, brother, sister, half brother, half sister, parent-in-law,  
38 brother-in-law, sister-in-law, nephew, niece, aunt, uncle, first  
39 cousin, or any person denoted by the prefix “grand” or “great,” or

1 the spouse of any of these persons, even if the marriage has been  
2 terminated by death or dissolution.

3 (k) “Home care aide applicant” means an individual, 18 years  
4 of age or older, who is requesting to become an registered home  
5 care aide and the department has received and is processing the  
6 individual’s complete home care aide application and fees.

7 (l) “Home care aide application” means the official form,  
8 designated by the department, to request to become a registered  
9 home care aide.

10 (m) “Home care aide registry” means a department-established  
11 and department-maintained Internet Web site of registered home  
12 care aides and home care aide applicants, which includes all of the  
13 following: the individual’s name, registration number, registration  
14 status, registration expiration date, and, if applicable, ~~the home~~  
15 ~~care organization to which the affiliated home care aide or affiliated~~  
16 ~~home care aide applicant is associated.~~ *either or both of the*  
17 *following:*

18 (1) *The home care organization or organizations with which*  
19 *the affiliated home care aide or affiliated home care aide applicant*  
20 *is associated.*

21 (2) *The domestic home care aide referral organization or*  
22 *organizations with which a registered home care aide is associated.*

23 (n) “Home care organization” means an individual, 18 years of  
24 age or older, firm, partnership, corporation, limited liability  
25 company, joint venture, association, or other entity that arranges  
26 for home care services by an affiliated home care aide to a client,  
27 and is licensed pursuant to this chapter.

28 (o) “Home care organization application” means the official  
29 form, designated by the department, to request to become a licensed  
30 home care organization.

31 (p) “Home care organization licensee” means an individual, 18  
32 years of age or older, firm, partnership, corporation, limited liability  
33 company, joint venture, association, or other entity having the  
34 authority and responsibility for the operation of a licensed home  
35 care organization.

36 (q) “Home care services” means nonmedical services and  
37 assistance provided by a registered home care aide to a client who,  
38 because of advanced age or physical or mental disability, cannot  
39 perform these services. These services enable the client to remain  
40 in his or her residence and include, but are not limited to, assistance

with the following: bathing, dressing, feeding, exercising, personal hygiene and grooming, transferring, ambulating, positioning, toileting and incontinence care, assisting with medication that the client self-administers, housekeeping, meal planning and preparation, laundry, transportation, correspondence, making telephone calls, shopping for personal care items or groceries, and companionship. This subdivision shall not authorize a registered home care aide to assist with medication that the client self-administers that would otherwise require administration or oversight by a licensed health care professional.

(r) "Independent home care aide" means an individual, 18 years of age or older, who is not employed by a home care organization, but who is listed on the home care aide registry and is providing home care services through a direct agreement with a client.

(s) "Registered home care aide" means an affiliated home care aide or independent home care aide, 18 years of age or older, who is listed on the home care aide registry. A registered home care aide may work as an affiliated home care aide and as an independent home care aide, ~~but not at the same time aide.~~

SEC. 2. Section 1796.14 of the Health and Safety Code is amended to read:

1796.14. (a) Individuals who are not employed by a home care organization *or referred by a domestic home care referral organization* but who provide home care services to a client may be listed on the home care aide registry.

(b) An affiliated home care aide ~~and independent home care aide~~ shall be listed on the home care aide registry prior to providing home care services to a client *through a home care organization*. ~~A An independent~~ home care aide shall be listed on the registry prior to being referred by a home care referral ~~agency~~ *organization* to a client.

(c) An individual providing home care services to a child is exempt from any requirement to be listed on the home care aide registry if the individual is one of the following:

- (1) A family member of the child.
- (2) A guardian of the child.
- (3) A conservator of the child.
- (4) A foster parent of the child, in a foster family home, as defined in paragraph (5) of subdivision (a) of Section 1502, or a

1 certified family home, as defined in subdivision (d) of Section  
2 1506.

3 (5) Nonrelative extended family member, as defined in Section  
4 362.7 of the Welfare and Institutions Code.

5 (6) Providing home care services in a facility in which only  
6 Indian children who are eligible under the federal Indian Child  
7 Welfare Act (25 U.S.C. 1901 et seq.) are placed and is one of the  
8 following:

9 (A) An extended family member of the Indian child, as defined  
10 in Section 1903 of Title 25 of the United States Code.

11 (B) A foster home that is licensed, approved, or specified by  
12 the Indian child's tribe pursuant to Section 1915 of Title 25 of the  
13 United States Code.

14 (7) Providing home care services as part of his or her job duties  
15 through one of the following entities:

16 (A) A home health agency licensed under Chapter 8  
17 (commencing with Section 1725).

18 (B) A hospice licensed under Chapter 8.5 (commencing with  
19 Section 1745).

20 (C) A health facility licensed under Chapter 2 (commencing  
21 with Section 1250).

22 (D) Any clinic licensed under Sections 1204 or 1204.1.

23 (E) A county providing in-home supportive services pursuant  
24 to Article 7 (commencing with Section 12300) of Chapter 3 of  
25 Part 3 of Division 9 of the Welfare and Institutions Code, without  
26 regard to whether the county provides these services as a public  
27 authority or through a nonprofit consortium established pursuant  
28 to Section 12301.6 of the Welfare and Institutions Code.

29 (F) A home medical device retail facility licensed under Section  
30 111656.

31 (G) An organization vendored or contracted through a regional  
32 center or the State Department of Developmental Services pursuant  
33 to the Lanterman Developmental Disabilities Services Act  
34 (Division 4.5 (commencing with Section 4500) of the Welfare and  
35 Institutions Code) and the California Early Intervention Services  
36 Act (Title 14 (commencing with Section 95000) of the Government  
37 Code) to provide services and supports for persons with  
38 developmental disabilities, as defined in Section 4512 of the  
39 Welfare and Institutions Code, when funding for those services is  
40 provided through the State Department of Developmental Services

1 and more than 50 percent of the recipients of the home care services  
2 provided by the organization are persons with developmental  
3 disabilities.

4 (H) A community care facility as licensed under Chapter 3  
5 (commencing with Section 1500), a residential care facility for  
6 persons with special health care needs licensed under Chapter 3.01  
7 (commencing with Section 1568.01), a residential care facility for  
8 the elderly licensed under Chapter 3.2 (commencing with Section  
9 1569), or a child day care licensed under Chapter 3.4 (commencing  
10 with Section 1596.70).

11 (I) Any alcoholism or drug abuse recovery or treatment facility  
12 as defined by Section 11834.02.

13 (J) Any other entity providing services similar to those described  
14 in this paragraph, as determined by the director.

15 (8) Providing services authorized pursuant to Section 2731 of  
16 the Business and Professions Code.

17 (d) (1) Home care aides shall not include individuals who are  
18 providing home care services as part of their job duties through  
19 one of the following entities:

20 (A) Services authorized to be provided by a licensed home  
21 health agency under Chapter 8 (commencing with Section 1725).

22 (B) Services authorized to be provided by a licensed hospice  
23 pursuant to Chapter 8.5 (commencing with Section 1745).

24 (C) Services authorized to be provided by a licensed health  
25 facility pursuant to Chapter 2 (commencing with Section 1250).

26 (D) In-home supportive services provided pursuant to Article  
27 7 (commencing with Section 12300) of Chapter 3 of Part 3 of  
28 Division 9 of the Welfare and Institutions Code.

29 (E) Services authorized to be provided by one of the following:

30 (i) A licensed residential care facility for the elderly pursuant  
31 to Chapter 3.2 (commencing with Section 1569).

32 (ii) A licensed community care facility pursuant to Chapter 3  
33 (commencing with Section 1500).

34 (iii) A licensed residential care facility for persons with chronic  
35 life-threatening illness pursuant to Chapter 3.01 (commencing with  
36 Section 1568.01).

37 (iv) A licensed facility, pursuant to the California Child Day  
38 Care Act (Chapter 3.4 (commencing with Section 1596.70)), which  
39 includes day care centers under Chapter 3.5 (commencing with

1 Section 1596.90) and family day care homes under to Chapter 3.6  
2 (commencing with Section 1597.30).

3 (2) Home care aides shall not include individuals providing  
4 services authorized to be provided pursuant to Section 2731 of the  
5 Business and Professions Code.

6 SEC. 3. Section 1796.17 of the Health and Safety Code is  
7 amended to read:

8 1796.17. A home care organization or a domestic home care  
9 aide referral organization shall not include the following:

10 (a) A home health agency licensed under Chapter 8  
11 (commencing with Section 1725).

12 (b) A hospice licensed under Chapter 8.5 (commencing with  
13 Section 1745).

14 (c) A health facility licensed under Chapter 2 (commencing  
15 with Section 1250).

16 (d) A county providing in-home supportive services pursuant  
17 to Article 7 (commencing with Section 12300) of Chapter 3 of  
18 Part 3 of Division 9 of the Welfare and Institutions Code, without  
19 regard to whether the county provides these services as a public  
20 authority or through a nonprofit consortium established pursuant  
21 to Section 12301.6 of the Welfare and Institutions Code.

22 (e) A home medical device retail facility licensed under Section  
23 111656.

24 (f) An organization vendored or contracted through a regional  
25 center or the State Department of Developmental Services pursuant  
26 to the Lanterman Developmental Disabilities Services Act  
27 (Division 4.5 (commencing with Section 4500) of the Welfare and  
28 Institutions Code) and the California Early Intervention Services  
29 Act (Title 14 (commencing with Section 95000) of the Government  
30 Code) to provide services and supports for persons with  
31 developmental disabilities, as defined in Section 4512 of the  
32 Welfare and Institutions Code, when funding for those services is  
33 provided through the State Department of Developmental Services  
34 and more than 50 percent of the recipients of the home care services  
35 provided by the organization are persons with developmental  
36 disabilities.

37 (g) An employment agency, as defined in Section 1812.5095  
38 of the Civil Code, that procures, offers, refers, provides, or attempts  
39 to provide ~~an independent home care aide who provides home care~~  
40 ~~services clients~~ *a domestic worker*, except that an employment



1 agency meeting ~~this description may be~~ *the definition of* a domestic  
2 home care aide referral organization *in subdivision (f) of Section*  
3 *1796.12*.

4 (h) A residential care facility for the elderly licensed under  
5 Chapter 3.2 (commencing with Section 1569).

6 (i) A community care facility licensed under Chapter 3  
7 (commencing with Section 1500), or a residential care facility for  
8 persons with chronic life-threatening illness licensed under Chapter  
9 3.01 (commencing with Section 1568.01).

10 (j) An person or organization performing activities that fall  
11 under the jurisdiction of a child day care facility licensed under  
12 Chapter 3.4 (commencing with Section 1596.70), a day care center  
13 licensed under Chapter 3.5 (commencing with Section 1596.60),  
14 or a family day care home licensed under Chapter 3.6 (commencing  
15 with Section 1597.30).

16 SEC. 4. Section 1796.22 of the Health and Safety Code is  
17 amended to read:

18 1796.22. Any individual who has submitted an application and  
19 who possesses any one of the following identification cards may  
20 initiate a background examination to be a registered home care  
21 aide:

22 (a) A valid California driver's license.

23 (b) A valid identification card issued by the Department of  
24 Motor Vehicles.

25 (c) A valid Alien Registration Receipt Card or valid Permanent  
26 Resident Card.

27 (d) In the case of a person living in a state other than California,  
28 a valid numbered photo identification card issued by an agency of  
29 the state other than California.

30 SEC. 5. Section 1796.29 of the Health and Safety Code is  
31 amended to read:

32 1796.29. The department shall do both of the following in the  
33 administration of the home care aide registry:

34 (a) Establish and maintain on the department's Internet Web  
35 site the registry of registered home care aides and home care aide  
36 applicants.

37 (1) To expedite the ability of a consumer to search and locate  
38 a registered home care aide or home care aide applicant, the  
39 Internet Web site shall enable consumers to look up the registration  
40 status by providing the registered home care aide's or home care

1 aide applicant's name, registration number, registration status, and  
2 registration expiration date.

3 (2) The Internet Web site shall not provide any additional,  
4 individually identifiable information about a registered home care  
5 aide or home care aide applicant. The department may request and  
6 may maintain additional information for registered home care aides  
7 or home care aide applicants, as necessary for the administration  
8 of this chapter, which shall not be publicly available on the home  
9 care aide registry.

10 (3) The Internet Web site shall distinguish between an affiliated  
11 and independent home care aide for purposes of informing potential  
12 consumers and the public of the differences between the two  
13 classifications.

14 (b) Update the home care registry upon receiving notification  
15 from a home care organization or a domestic home care aide  
16 referral organization that the home care aide is no longer employed  
17 by or associated with the organization.

18 SEC. 6. Section 1796.33 of the Health and Safety Code is  
19 amended to read:

20 1796.33. An individual who has submitted an application and  
21 who possesses any one of the following identification cards may  
22 initiate a background examination to be a licensed home care  
23 organization or a licensed domestic home care aide referral  
24 organization:

25 (a) A valid California driver's license.

26 (b) A valid identification card issued by the Department of  
27 Motor Vehicles.

28 (c) A valid Alien Registration Receipt Card or valid Permanent  
29 Resident Card.

30 (d) In the case of a person living in a state other than California,  
31 a valid numbered photo identification card issued by an agency of  
32 the state other than California.

33 SEC. 7. Section 1796.34 of the Health and Safety Code is  
34 amended to read:

35 1796.34. (a) In order to obtain a home care organization license  
36 or a domestic home care aide referral organization license, the  
37 following individual or individuals shall consent to the background  
38 examination described in Section 1796.23:

39 (1) The owner or owners of the applicant, if the owners are  
40 individuals.

1 (2) If the owner of the applicant is a corporation, limited liability  
2 company, joint venture, association, or other entity, an individual  
3 having a 10-percent or greater interest in that entity.

4 (b) A person who is a current licensee or employee in a facility  
5 licensed by the department, a certified foster parent, a certified  
6 administrator, or a registered TrustLine provider may transfer his  
7 or her current criminal record clearance or exemption for purposes  
8 of licensure under this chapter pursuant to subdivision (h) of  
9 Section 1522. The person shall, instead, submit to the department,  
10 along with the person's application, a copy of his or her  
11 identification card, as required pursuant to Section 1796.33, and  
12 a declaration verifying the person's identity that is signed under  
13 penalty of perjury.

14 SEC. 8. Section 1796.35 of the Health and Safety Code is  
15 amended to read:

16 1796.35. (a) A person or a private or public organization, with  
17 the exception of a county providing in-home supportive services  
18 pursuant to Article 7 (commencing with Section 12300) of Chapter  
19 3 of Part 3 of Division 9 of the Welfare and Institutions Code, and  
20 the exceptions provided for in subdivision (c), shall not do any of  
21 the following, unless it is a licensed home care organization under  
22 this chapter:

23 (1) Represent himself, herself or itself to be a home care  
24 organization by name, advertising, soliciting, or any other  
25 presentments to the public, or in the context of services within the  
26 scope of this chapter, imply that he, she, or it is licensed to provide  
27 those services or to make any reference to employee bonding in  
28 relation to those services.

29 (2) Use the terms "home care organization," "home care,"  
30 "in-home care," or any combination of those terms, within its  
31 name.

32 (b) A person or a private or public organization, with the  
33 exception of a county providing in-home supportive services  
34 pursuant to Article 7 (commencing with Section 12300) of Chapter  
35 3 of Part 3 of Division 9 of the Welfare and Institutions Code, and  
36 the exceptions provided for in subdivision (c), shall not do any of  
37 the following, unless it is a licensed domestic home care aide  
38 referral organization under this chapter:

39 (1) Represent himself, herself, or itself to be a domestic home  
40 care aide referral organization by name, advertising, soliciting, or

1 any other presentment to the public, or in the context of services  
2 within the scope of this chapter, imply that he, she, or it is licensed  
3 to provide those services or to make any reference to employment  
4 agency or bonding in relation to those services.

5 (2) Use the terms “domestic home care aide referral  
6 organization,” “home care organization,” “home care,” “in-home  
7 care,” or any combination of those terms, within its name.

8 (c) (1) This section does not apply to a county providing  
9 in-home supportive services pursuant to Article 7 (commencing  
10 with Section 12300) of Chapter 3 of Part 3 of Division 9 of the  
11 Welfare and Institutions Code.

12 (2) Subdivision (a) does not apply to a domestic home care aide  
13 referral organization.

14 (3) Subdivision (b) does not apply to a home care organization.

15 SEC. 9. Section 1796.37 of the Health and Safety Code is  
16 amended to read:

17 1796.37. (a) A home care organization or domestic home care  
18 aide referral organization that has its principal place of business  
19 in another state, in addition to the other requirements of this  
20 chapter, before arranging for home care services provided by a  
21 registered home care aide to a client in the state, shall comply with  
22 all of the following:

23 (1) Have an office in California.

24 (2) Maintain all pertinent records of the operation in California  
25 at the California office. All records shall be available to review,  
26 copy, audit, and inspect by the licensing agency.

27 (b) If the home care organization or domestic home care aide  
28 referral organization is a foreign corporation, foreign limited  
29 liability company, foreign limited partnership, foreign association,  
30 or a foreign limited liability partnership, as defined in Sections  
31 170, 171, 171.03, 171.05, and 16101 of the Corporations Code,  
32 before arranging for home care services provided by a registered  
33 home care aide to a client in the state, the home care organization  
34 or domestic home care aide referral organization shall have an  
35 office in California and shall comply with both of the following:

36 (1) Register with the Secretary of State to conduct intrastate  
37 business in California.

38 (2) Maintain all pertinent records of the operation in California  
39 at the California office. All records shall be available to review,  
40 copy, audit, and inspect by the licensing agency.

SEC. 10. Section 1796.38 of the Health and Safety Code is amended to read:

1796.38. (a) The department shall issue a home care organization license to an individual or other entity that satisfies all of the requirements set forth in this chapter, including all of the following:

(1) Files a home care organization application, including the fees required pursuant to Section 1796.49.

(2) Submits proof of general and professional liability insurance in the amount of at least one million dollars (\$1,000,000) per occurrence and three million dollars (\$3,000,000) in the aggregate.

(3) Submits proof of a valid workers' compensation policy covering its affiliated home care aides. The proof shall consist of the policy number, the effective and expiration dates of the policy, and the name and address of the policy carrier.

(4) Provides the department, upon request, with a complete list of its affiliated home care aides, and proof that each satisfies the requirements of Section ~~1796.34~~ 1796.23.

(5) The owner or owners of the home care organization pass a background examination, as required pursuant to Section 1796.34.

(6) The applicant does not have any outstanding fees or civil penalties due to the department.

(b) The department shall issue a domestic home care aide referral organization license to a domestic home care aide referral organization applicant that satisfies the requirements set forth in this chapter, including all of the following:

(1) Files a complete domestic home care aide referral organization application, including the fees required pursuant to Section 1796.50.

(2) Submits proof of general and professional liability insurance in the amount of at least one million dollars (\$1,000,000) per occurrence and three million dollars (\$3,000,000) in the aggregate.

(3) Submits evidence of compliance with the bond requirements, in accordance with Section 1812.503 of the Civil Code.

*(4) Provides the department, upon request, with a list of independent home care aides and proof that each satisfies the requirements of Section 1796.23.*

~~(4)~~

1 (5) The owner or owners of the domestic home care aide referral  
2 organization pass a background examination, as required pursuant  
3 to Section 1796.34.

4 ~~(5)~~

5 (6) The applicant does not have any outstanding fees or civil  
6 penalties due to the department.

7 SEC. 11. Section 1796.39 of the Health and Safety Code is  
8 amended to read:

9 1796.39. (a) A licensee shall renew the home care organization  
10 license or domestic home care aide referral organization license  
11 every two years.

12 (b) Renewal shall be conditioned upon the licensee doing both  
13 of the following:

14 (1) Submitting a complete renewal application form and payment  
15 of fees, both of which shall be postmarked on or before the  
16 expiration of the license.

17 (2) Continuing to satisfy the requirements set forth in this  
18 chapter, and cooperating with the department in the completion  
19 of the renewal process.

20 (c) Failure of the licensee to cooperate may result in the  
21 withdrawal of the license renewal application. "Failure to  
22 cooperate" means that the information described in this chapter  
23 and in any rules and regulations promulgated under this chapter  
24 has not been provided, or not provided in the form requested by  
25 the department, or both.

26 SEC. 12. Section 1796.40 is added to the Health and Safety  
27 Code, immediately following Section 1796.39, to read:

28 1796.40. (a) A domestic home care aide referral organization  
29 shall be separately licensed.

30 (b) Nothing in this chapter shall prevent a licensee from  
31 obtaining more than one domestic home care aide referral  
32 organization license or obtaining a domestic home care aide referral  
33 organization license in addition to other licenses issued by the  
34 department, or both.

35 SEC. 13. Section 1796.41 of the Health and Safety Code is  
36 amended to read:

37 1796.41. (a) A home care organization licensee and a domestic  
38 home care aide referral organization licensee shall do ~~both~~ *all* of  
39 the following:

1 (1) Post its license and business hours in its place of business  
2 in a conspicuous location, visible both to clients and ~~affiliated~~  
3 ~~registered~~ home care aides.

4 (2) Report any suspected or known adult abuse as required by  
5 Section 15630 of the Welfare and Institutions Code and suspected  
6 or known child abuse as required by Sections 11164 to 11174.3,  
7 inclusive, of the Penal Code. A copy of each suspected abuse report  
8 shall be maintained and available for review by the department  
9 during normal business hours.

10 (3) *Provide clients with written information regarding the types*  
11 *and hours of available services and the fees associated with those*  
12 *services and a disclosure that services may or may not be a covered*  
13 *benefit through Medicare or Medi-Cal.*

14 (b) In addition to the requirements of subdivision (a), a home  
15 care organization licensee shall do both of the following:

16 (1) Maintain and abide by a valid workers' compensation policy  
17 covering its affiliated home care aides.

18 (2) Maintain and abide by an employee dishonesty bond,  
19 including third-party coverage, with a minimum limit of ten  
20 thousand dollars (\$10,000).

21 (c) In addition to the requirements of subdivision (a), a domestic  
22 home care aide referral organization *referring an independent*  
23 *home care aide* shall do ~~both~~ all of the following:

24 (1) Comply with the bond requirements included in Section  
25 1812.503 of the Civil Code.

26 ~~(2) Inform, both orally and in writing, a prospective customer~~  
27 ~~seeking a referral of an independent home care aide of the~~  
28 ~~disclosures required pursuant to Section 1812.5095 of the Civil~~  
29 ~~Code.~~

30 (2) *Orally communicate to the person seeking home care aide*  
31 *services the disclosure set forth in this paragraph prior to the*  
32 *referral of the home care aide:*

33  
34 *“(Name of the referral organization) is not the employer of the*  
35 *domestic worker that it referred to you. Depending on your*  
36 *arrangement with the domestic worker, you may have the*  
37 *responsibilities of an employer. A written disclosure with additional*  
38 *information is being mailed to you.”*  
39

1     (3) *Within three business days after the domestic home care*  
2 *aide referral organization refers a registered home care aide to*  
3 *the person seeking home care aide services, mail the following*  
4 *statement, printed in not less than 10-point type and in bold or*  
5 *italic, to the person seeking domestic services:*

6  
7     “(Name of the referral organization) is not the employer of the  
8 domestic worker it referred to you. The domestic worker may be  
9 your employee or an independent contractor depending on the  
10 relationship you have with him or her. If you direct and control  
11 the manner and means by which the domestic worker performs his  
12 or her work, you may have the responsibilities of an employer,  
13 including employment taxes and workers’ compensation, under  
14 state and federal law. For additional information contact your  
15 local Employment Development Department and the Internal  
16 Revenue Service. (Name of referral organization) is a referral  
17 agency and does not employ, control, or train any home care aide  
18 it refers.”

19  
20     (4) *A domestic home care aide referral organization referring*  
21 *home care aides shall, in any paid advertising brochure or the*  
22 *domestic home care aide referral organization’s Internet Web site*  
23 *promoting the domestic home care aide referral organization’s*  
24 *services, insert the following statement, in no less than 10-point*  
25 *type and in a color that contrasts with the background so it is*  
26 *easily legible:*

27  
28     “(Name of the referral organization) is a referral agency.”

29  
30     (5) *Provide, upon receipt of a written request from a client for*  
31 *whom a registered home care aide provided the client services, a*  
32 *statement of payments made on behalf of the client to the registered*  
33 *home care aide through the domestic home care aide referral*  
34 *organization’s trust account.*

35     SEC. 14. Section 1796.42 of the Health and Safety Code is  
36 amended to read:

37     1796.42. (a) Home care organizations that employ affiliated  
38 home care aides and domestic home care aide referral agencies  
39 organizations that refer registered home care aides shall ensure  
40 the home care aides are cleared on the home care aide registry



1 before placing the individual in direct contact with clients. In  
2 addition, the home care organization or domestic home care aide  
3 referral organization shall do all of the following:

4 (1) Ensure any staff person, volunteer, or employee who has  
5 contact with clients, prospective clients, or confidential client  
6 information that may pose a risk to the clients' health and safety  
7 has met the requirements of Section 1796.23 before being hired.

8 (2) Require home care aides to demonstrate that they are free  
9 of active tuberculosis disease, pursuant to Section 1796.45.

10 (3) A home care organization shall immediately notify the  
11 department when the home care organization no longer employs  
12 an individual as an affiliated home care aide. *A domestic home  
13 care aide referral organization shall immediately notify the  
14 department when the domestic home care aide referral  
15 organization no longer has a relationship with an independent  
16 home care aide.*

17 (b) This section shall not prevent a licensee from requiring a  
18 criminal record clearance of any individual exempt from the  
19 requirements of this section, provided that the individual has client  
20 contact.

21 *SEC. 15. The heading of Article 8 (commencing with Section  
22 1796.44) of Chapter 13 of Division 2 of the Health and Safety  
23 Code is amended to read:*

24  
25 Article 8. ~~Affiliated~~ Home Care Aides Provided by Licensed  
26 Organizations  
27

28 ~~SEC. 15.~~

29 *SEC. 16.* Section 1796.44 of the Health and Safety Code is  
30 amended to read:

31 1796.44. (a) A home care organization licensee shall ensure  
32 that, prior to providing home care services, an affiliated home care  
33 aide shall complete the training requirements specified in  
34 subdivisions (b) and (c). A domestic home care aide referral  
35 organization shall ensure, prior to that person being referred to a  
36 client, that a registered home care aide demonstrate proficiency  
37 as provided in subdivision (d).

38 (b) An affiliated home care aide shall complete a minimum of  
39 five hours of entry-level training prior to presence with a client,  
40 as follows:

1 (1) Two hours of orientation training regarding his or her role  
2 as caregiver and the applicable terms of employment.

3 (2) Three hours of safety training, including basic safety  
4 precautions, emergency procedures, and infection control.

5 (c) In addition to the requirements in subdivision (b), an  
6 affiliated home care aide shall complete a minimum of five hours  
7 of annual training. The annual training shall relate to core  
8 competencies and be population specific, which shall include, but  
9 not be limited to, the following areas:

10 (1) Clients' rights and safety.

11 (2) Activities of daily living, including how to provide for and  
12 respond to a client's daily needs.

13 (3) How to detect, report, and prevent abuse and neglect.

14 (4) Assisting a client with personal hygiene.

15 (5) Safely transporting clients, if transportation services are  
16 provided by the registered home care aide.

17 (6) Infection control.

18 (7) Basic safety precautions.

19 (d) (1) An independent home care aide who is being referred  
20 by a domestic home care aide referral organization shall ~~annually~~  
21 ~~complete a proficiency exam that includes all of the following~~  
22 ~~topics do both of the following:~~

23 (A) *Annually complete a proficiency exam that includes all of*  
24 *the following topics:*

25 ~~(A)~~

26 (i) Clients' rights and safety.

27 ~~(B)~~

28 (ii) Activities of daily living, including how to provide for and  
29 respond to a client's daily needs.

30 ~~(C)~~

31 (iii) How to detect, report, and prevent abuse and neglect.

32 ~~(D)~~

33 (iv) Assisting clients with personal hygiene.

34 ~~(E)~~

35 (v) Safely transporting clients, if transportation services are  
36 provided by the registered home care aide.

37 ~~(F)~~

38 (vi) Infection control.

39 ~~(G)~~

40 (vii) Basic safety precautions.

1     (B) *Provide verifiable work references demonstrating that the*  
2 *home care aide has the necessary work experience to provide home*  
3 *care services.*

4     (2) An independent home care aide who does not complete the  
5 proficiency exam shall not be eligible for referral to prospective  
6 clients.

7     (3) *The proficiency exam provided shall include*  
8 *department-approved, job-related topics described in this*  
9 *subdivision and may be provided via an online proficiency*  
10 *examination or a written proficiency examination administered*  
11 *by the domestic home care aide referral organization or their*  
12 *designee.*

13     (e) The entry-level training and annual training on  
14 department-approved job-related topics described in subdivisions  
15 (b) and (c) may be completed through an online training program.

16     (f) A registered home care aide who possesses a current and  
17 valid certification from the State Department of Public Health as  
18 a Certified Nurse Assistant or Certified Home Health Aide is  
19 exempt from the requirements of subdivisions (c) and (d).

20     ~~SEC. 16.~~

21     ~~SEC. 17.~~ Section 1796.45 of the Health and Safety Code is  
22 amended to read:

23     1796.45. (a) An individual hired to be an ~~independent~~ *affiliated*  
24 home care aide on or after January 1, 2015, or a registered home  
25 care aide entering into an agreement with a domestic home care  
26 aide referral organization after January 1, 2016, shall be submitted  
27 to an examination 90 days prior to employment or the effective  
28 date of the agreement or within seven days after employment or  
29 the effective date of the agreement to determine that the individual  
30 is free of active tuberculosis disease.

31     (b) For purposes of this section, “examination” means a test for  
32 tuberculosis infection that is recommended by the federal Centers  
33 for Disease Control and Prevention (CDC) and that is licensed by  
34 the federal Food and Drug Administration (FDA) and, if that test  
35 is positive, an X-ray of the lungs. The aide shall not work as a  
36 registered home care aide unless he or she obtains documentation  
37 from a licensed medical professional that there is no risk of  
38 spreading the disease.

1 (c) An affiliated home care aide whose employment with a home  
2 care organization began before January 1, 2015, shall submit to  
3 the examination described in subdivision (a) before July 1, 2015.

4 (d) After submitting to an examination, a home care aide whose  
5 test for tuberculosis infection is negative shall be required to  
6 undergo an examination at least once every two years. Once a  
7 home care aide has a documented positive test for tuberculosis  
8 infection that has been followed by an X-ray, the examination is  
9 no longer required.

10 (e) After the examination, a home care aide shall submit, and  
11 the home care organization or domestic home care aide referral  
12 organization shall keep on file, a certificate from the examining  
13 practitioner showing that the home care aide was examined and  
14 found free from active tuberculosis disease.

15 (f) The examination is a condition of initial and continuing  
16 employment with the home care organization. The examination is  
17 also a condition of a registered home care aide's initial and  
18 continuing agreement with a domestic home care aide referral  
19 organization. The home care aide shall pay the cost of the  
20 examination.

21 (g) A home care aide who transfers employment from one home  
22 care organization to another or a registered home care aide entering  
23 into an agreement with a domestic home care aide referral  
24 organization shall be deemed to meet the requirements of  
25 subdivision (a) or (c) if the home care aide can produce a certificate  
26 showing that he or she submitted to the examination within the  
27 past two years and was found to be free of active tuberculosis  
28 disease, or if it is verified by the home care organization previously  
29 employing him or her or by the domestic home care aide referral  
30 organization that previously had an agreement with him or her that  
31 the home care organization or domestic home care aide referral  
32 organization has a certificate on file that contains that showing.

33 ~~SEC. 17.~~

34 *SEC. 18.* Section 1796.50 is added to the Health and Safety  
35 Code, to read:

36 1796.50. (a) A domestic home care aide referral organization  
37 licensee shall pay the following fees:

38 (1) A 24-month initial license fee, as prescribed by the  
39 department in an amount sufficient to cover the reasonable costs  
40 of administering the program, for a new domestic home care aide

1 referral organization licensee not currently licensed to provide  
2 home care services in the state.

3 (2) A two-year renewal fee, as determined by the department  
4 in an amount sufficient to cover the reasonable costs of  
5 administering the program, based on the number of office locations  
6 operated by the licensee providing registered home care aides to  
7 clients.

8 (3) Other reasonable fees as prescribed by the department  
9 necessary for the administration of this chapter.

10 (b) The fees collected shall be deposited into the Home Care  
11 Fund pursuant to subdivision (b) of Section 1796.47.

12 ~~SEC. 18.~~

13 *SEC. 19.* Section 1796.51 of the Health and Safety Code is  
14 amended to read:

15 1796.51. In order to carry out the provisions of this chapter,  
16 the department may establish procedures for the receipt,  
17 investigation, and resolution of complaints against home care  
18 organizations and domestic home care aide referral organizations.

19 ~~SEC. 19.~~

20 *SEC. 20.* Section 1796.52 of the Health and Safety Code is  
21 amended to read:

22 1796.52. (a) The department may review and, if it determines  
23 necessary, investigate complaints filed against home care  
24 organizations or domestic home care aide referral organizations  
25 regarding violations of this chapter or any rules or regulations  
26 promulgated under this chapter.

27 (b) The department shall verify through random, unannounced  
28 inspections that a home care organization or domestic home care  
29 aide referral organization meets the requirements of this chapter  
30 and the rules and regulations promulgated under this chapter.

31 (c) An investigation or inspection conducted by the department  
32 pursuant to this chapter may include, but is not limited to,  
33 inspection of the books, records, or premises of a home care  
34 organization or domestic home care aide referral organization. An  
35 organization's refusal to make records, books, or premises available  
36 shall constitute cause for the revocation of the organization's  
37 license.

38 (d) Other than maintaining the home care registry, the  
39 department shall have no oversight responsibility regarding  
40 registered home care aides.

1     ~~SEC. 20.~~

2     *SEC. 21.* Section 1796.53 of the Health and Safety Code is  
3 amended to read:

4     1796.53. A duly authorized officer, employee, or agent of the  
5 department may, upon presentation of proper identification, enter  
6 a home care organization or domestic home care aide referral  
7 organization during posted business hours, with or without advance  
8 notice, to secure compliance with, or to prevent a violation of, any  
9 provision of this chapter or any provision promulgated under this  
10 chapter.

11     ~~SEC. 21.~~

12     *SEC. 22.* Section 1796.55 of the Health and Safety Code is  
13 amended to read:

14     1796.55. (a) A home care organization or domestic home care  
15 aide referral organization that operates in violation of any  
16 requirement or obligation imposed by this chapter or any rule or  
17 regulation promulgated under this chapter may be subject to the  
18 fines levied or licensure action taken by the department as specified  
19 in this chapter.

20     (b) When the department determines that a home care  
21 organization or domestic home care aide referral organization is  
22 in violation of this chapter or any rules or regulations promulgated  
23 under this chapter, a notice of violation shall be served upon the  
24 licensee. Each notice of violation shall be prepared in writing and  
25 shall specify the nature of the violation and the statutory provision,  
26 rule, or regulation alleged to have been violated. The notice shall  
27 inform the licensee of any action the department may take under  
28 this chapter, including the requirement of a plan of correction,  
29 assessment of a penalty, or action to suspend, revoke, or deny  
30 renewal of the license. The director or his or her designee shall  
31 also inform the licensee of rights to a hearing under this chapter.

32     (c) The department may impose a fine of up to nine hundred  
33 dollars (\$900) per violation per day commencing on the date the  
34 violation was identified and ending on the date each violation is  
35 corrected, or action is taken to suspend, revoke, or deny renewal  
36 of the license, whichever comes first.

37     (d) The department shall adopt regulations establishing  
38 procedures for notices, correction plans, appeals, and hearings.

1     ~~SEC. 22.~~

2     *SEC. 23.* Section 1796.61 of the Health and Safety Code is  
3 amended to read:

4     1796.61. The provisions of this chapter that apply to home care  
5 aides, to home care organizations, and to domestic home care aide  
6 referral organizations shall become operative on January 1, 2016.

7     ~~SEC. 23.~~

8     *SEC. 24.* Section 1796.63 of the Health and Safety Code is  
9 amended to read:

10    1796.63. The department shall adopt, amend, or repeal, in  
11 accordance with Chapter 3.5 (commencing with Section 11340)  
12 of the Government Code, any reasonable rules, regulations, and  
13 standards as may be necessary or proper to carry out the purpose  
14 and intent of this chapter and to enable the department to exercise  
15 the powers and perform the duties conferred upon it by this chapter,  
16 not inconsistent with any of the provisions of any statute of this  
17 state. Notwithstanding the rulemaking provisions of the  
18 Administrative Procedure Act (Chapter 3.5 (commencing with  
19 Section 11340) of Part 1 of Division 3 of Title 2 of the Government  
20 Code), the department may implement and administer this chapter  
21 through written directives, without taking regulatory action, subject  
22 to the limitations provided in subdivision (b).

23    (a) The department shall post any proposed rules promulgated  
24 under this section on its public Internet Web site no later than 90  
25 calendar days prior to the effective date of the proposed rule, which  
26 shall also include notification to the public regarding how members  
27 of the public may comment, including the date on which those  
28 comment must be received in order to be considered by the  
29 department.

30    (b) The department's authority to implement and administer  
31 this section through written directives shall expire no later than 12  
32 months after the written directives are promulgated and posted on  
33 a public Internet Web site, or upon the effective date of regulations  
34 promulgated in accordance with the Administrative Procedure Act  
35 (Chapter 3.5 (commencing with Section 11340) of Part 1 of  
36 Division 3 of Title 2 of the Government Code), whichever occurs  
37 sooner.

38     ~~SEC. 24.~~

39     *SEC. 25.* No reimbursement is required by this act pursuant to  
40 Section 6 of Article XIII B of the California Constitution because

1 the only costs that may be incurred by a local agency or school  
2 district will be incurred because this act creates a new crime or  
3 infraction, eliminates a crime or infraction, or changes the penalty  
4 for a crime or infraction, within the meaning of Section 17556 of  
5 the Government Code, or changes the definition of a crime within  
6 the meaning of Section 6 of Article XIII B of the California  
7 Constitution.

O